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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,293	09/14/2000	Catherine A. McCall	AL-2-C4	9793

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HESKA CORPORATION  
INTELLECTUAL PROPERTY DEPT.  
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FORT COLLINS, CO 80525

EXAMINER

WOITACH, JOSEPH T

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 12/10/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/662,293

Applicant(s)

MCCALL ET AL.

Examiner

Joseph Voitach

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1632

**DETAILED ACTION**

This application filed September 14, 2000, is a continuation in part of 09/292,225, filed April 15, 1999, which claims priority to provisional applications: 60/098,909, filed September 2, 1998; 60/085,295, filed May 13, 1998; and 60/098,565, filed April 17, 1998.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 14 and 16, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.
- II. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 17 and 19, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.

Art Unit: 1632

- III. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 20 and 22, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.
- IV. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 34 and 36, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.
- V. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 37 and 39, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.

Art Unit: 1632

- VI. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 40 and 42, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.
- VII. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid set forth in SEQ ID NOs 43 and 45, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.
- VIII. Claims 1-8, 16-18, 22, 24 and 25, drawn to an isolated nucleic acid which encodes the amino acid sequence set forth in SEQ ID NO: 33, a cell or recombinant virus containing said nucleic acid, a method of producing a protein from said nucleic acid, and a method to desensitizing a host animal by administration of said nucleic acid, classified in class 536, subclass 23.1, class 514, subclass 44, class 435, subclass 70.1.

Art Unit: 1632

- IX. Claims 9-12, 14-17, 19-20 and 21-24, drawn to an isolated protein selected from the SEQ ID NOs recited in claim 9, and a method of desensitizing a host animal by administration of said protein, classified in class 530, subclass 350.
- X. Claims 13, 16, 17, 22 and 24 drawn to an antibody to the protein recited in claim 9 and a method of desensitizing a host animal by administration of said antibody, classified in class 435, subclass 7.1.
- XI. Claims 16, 17, 22 and 24, drawn to a therapeutic composition comprising a mimetope and a method of desensitizing a host animal by administration of a mimetope, classified in class 514, subclass 1.
- XII. Claims 16, 17, 22 and 24, drawn to a therapeutic composition comprising a mutein and a method of desensitizing a host animal by administration of a mutein, classified in class 514, subclass 1.
- XIII. Claims 16, 17, 22 and 24, drawn to a therapeutic composition comprising a inhibitor and a method of desensitizing a host animal by administration of a inhibitor, unclassifiable because there is not an adequate description of an inhibitor in the specification.
- XIV. Claims 26, 28-31, drawn to a reagent comprising non-proteinaceous epitope and a method of using same, classified in class 514, subclass 1.
- XV. Claim 27, drawn to an antibody that selectively binds to a non-proteinaceous epitope, classified in class 435, subclass 7.1.

Art Unit: 1632

Claims 16, 17, 22 and 24 are generic to groups I-XIII and will be reviewed to the extent in which they are encompassed by the selected group.

The inventions are distinct, each from the other because of the following reasons:

Groups I-VIII are drawn to distinct products capable of separate use. Each of groups I-VIII encompass a unique polynucleotide sequence and uses thereof. Further, each polynucleotide encodes a unique polypeptide. Each of the polynucleotides can be used separately to specifically identify or isolate said polynucleotide in a mixed sample. The polynucleotide set forth in one SEQ ID NO would anticipate or render obvious the polynucleotide of another SEQ ID NO.

Groups I-VIII, IX, and X and XV are drawn to distinct products capable of separate use. The nucleic acid of group I-VIII can be used as a probe in hybridization assays, the polypeptide of group IX can be used to produce antibodies, and the antibody of groups X and XV can be used to purify or identify an antigen from a sample.

Claims X and XV are independent and distinct, each product is an antibody, however the epitope recognized by the antibodies are different and unique. The antibody of group X can be used to identify the proteins recited in claim 9 and the antibody of claim XV can be used to identify non-proteinaceous epitopes.

Groups I-X, XV and XI-XIII are drawn to different products and methods capable of independent and separate use. The products of groups I-X, XV are not necessary to practice the methods of groups XI-XIII.

Art Unit: 1632

Groups XI-XIII are drawn to different and distinct methods. The methods of groups IV-VI each use different starting products and would require different and unique preparations and steps to practice the claimed methods.

The inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each of the above invention is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of any one Group would not necessarily anticipate or make obvious any of the other groups.

For these reasons restriction for examination is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).




Art Unit: 1632

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Woitach, whose telephone number is (703) 305-3732.

If attempts to reach the examine by telephone are unsuccessful, the examiner's supervisor, Karen M. Hauda, can be reached on (703) 305-6608.

An inquiry of a general nature or relating to the status of the application should be directed to the patent analyst Kay Pinkney whose telephone number is (703) 305-3553.

Papers related to this application may be submitted by facsimile transmission. Papers should be faxed via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center numbers are (703)308-4242 and (703)305-3014.

  
DEBORAH CROUCH  
PRIMARY EXAMINER  
GROUP 1800/1430

Joseph T. Woitach